

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VALVE CORPORATION,

Petitioner,

v.

ABBRUZZESE et al.,

Respondents.

No. 2:24-CV-1717-JNW

**PETITIONER'S REPLY IN SUPPORT  
OF ITS RENEWED *EX PARTE*  
MOTION SEEKING LEAVE TO  
PROVIDE COMMUNICATION TO  
CERTAIN RESPONDENTS**

**ORAL ARGUMENT REQUESTED**

PETITIONER'S REPLY IN SUPPORT OF ITS  
RENEWED *EX PARTE* MOTION SEEKING  
LEAVE TO PROVIDE COMMUNICATION TO  
CERTAIN RESPONDENTS

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1 Valve Corporation (“Valve”) submits this reply in support of its renewed *ex parte* Motion  
2 requesting leave to communicate with Respondents (the “Motion” or “Mot,” Dkt. 39).

3 The Response to Valve’s Motion (Dkt. 48) highlights the reason why Valve filed its *ex*  
4 *parte* motion seeking guidance under Washington Rule of Professional Conduct (“RPC”) 4.2. As  
5 it stands, William Bucher and Bucher Law PLLC (collectively, “Bucher”) and Bailey Duquette  
6 PC (“Bailey”) have appeared in this case for just *three* Respondents. Under normal circumstances,  
7 Valve would be able to communicate freely with the remaining unrepresented Respondents about  
8 this action, while of course refraining from communications regarding the substance of the  
9 underlying arbitrations, as Bucher is counsel for the Respondents in those proceedings. *See* RPC  
10 4.2. But because Bucher told Valve he represents all Respondents in this proceeding—a  
11 representation that he and Bailey remain steadfastly unwilling to make to the Court—Valve has  
12 been unable to communicate with those Respondents by operation of RPC 4.2. As the Status  
13 Report that Bailey filed (Dkt. 49) confirms, neither Valve nor the Court can get a straight answer  
14 as to which Respondents Bucher and/or Bailey actually represent *in this proceeding* (as opposed  
15 to the underlying arbitration).

16 In view of those constraints, Valve proposed a communications plan to the Court in its  
17 renewed *ex parte* motion. That communications plan was designed to provide Respondents who  
18 had reached out to Valve or missed their original deadlines to respond to the Petition to Enjoin  
19 Arbitrations (the “Petition,” Dkt. 1) with accurate information in a minimally invasive fashion to  
20 help move this proceeding forward with respect to those unrepresented Respondents by providing  
21 them with options for taking action. Valve is not tied to the specific messages it proposed and is  
22 open to whatever communications path the Court concludes is appropriate.

23 The bulk of the Response is inapposite to the relief requested here—permission for Valve  
24 to communicate with Respondents who do not appear to be represented by counsel in this action.  
25 The Response does not (i) dispute that the Respondents with whom Valve wishes to communicate  
26 are unrepresented in this proceeding; (ii) explain why Valve should not be permitted to

1 communicate with them; or (iii) meaningfully address the actual content of Valve’s proposed  
2 communications.<sup>1</sup> (Dkt. 48 at 8.)

3 The ethical concern about communications with represented parties dissipates when, as  
4 here, parties are not actually represented by counsel. The Response asserts that Valve needs to  
5 show “exceptional circumstances” in order to communicate with “its litigation adversaries” (Dkt.  
6 48 at 3), but no such rule exists. Valve may freely communicate with *unrepresented* “litigation  
7 adversaries.” *See* RPC 4.2 (restricting communications only with parties represented by counsel).  
8 Respondents who have directly contacted Valve or who may have missed their deadline to respond  
9 to the Petition have no legal representation in this proceeding and Valve should not be impeded in  
10 engaging in such communications. And even if some of these Respondents did have legal  
11 representation, exceptional circumstances warranting such communications are present here for  
12 the reasons stated in Valve’s Motion. (*See* Dkt. 39 at 5-6.)

13 Accordingly, Valve respectfully requests that the Court enter an order permitting Valve to  
14 send the proposed communications attached as Exhibits 1 and 2 to the Motion. If the Court wishes  
15 Valve to make any modifications to the proposed communications, Valve would be happy to do  
16 so. Valve also has no objection either to (i) copying the Court on any email communications; or  
17 (ii) providing the Court the relevant contact information under seal to permit the Court to send any  
18 message it desires.

## 19 **I. CLARIFYING THE RELEVANT FACTS**

20 Instead of addressing the relief Valve seeks, the Response instead focuses on  
21 misrepresentations and baseless attacks against Valve. While those misrepresentations and attacks  
22 are not central to the issue raised in Valve’s motion, Valve is briefly responding to a limited set of  
23 them to make the record clear.

24 The Response purports to have been filed on behalf of all Respondents. (*See* Dkt. 48.) But

25 <sup>1</sup> The Response asserts that Valve’s proposed communications would “misinform” Respondents  
26 “that they have missed a fictitious deadline.” (Dkt. 48 at 8.) But Valve’s proposed communications  
do not mention any deadlines at all. (*See* Mot. Exs. 1, 2.)

1 Bucher and Bailey have appeared for only three Respondents. The Response confirms that the  
 2 remaining Respondents are not represented in this proceeding—Bucher and Bailey would have no  
 3 need to ask for the identity of the individuals who reached out to Valve if they actually represented  
 4 those individuals.<sup>2</sup> Bailey’s Status Report further confirms that the remaining Respondents are not  
 5 represented. (Dkt. 49 at 1 (“Bailey Duquette intends to appear on behalf of class representatives”  
 6 but “has not done so yet.”).)<sup>3</sup>

7 The few Respondents Bucher and Bailey actually represent—and who are not the subject  
 8 of this Motion—have no standing to oppose this Motion or to request that the Court order Valve  
 9 to release the names of the individuals who have contacted Valve. (Dkt. 48 at 2.) *See Creekmore*  
 10 *v. Food Lion, Inc.*, 797 F. Supp. 505, 509 (E.D. Va. 1992) (rejecting attempt by “one party, through  
 11 counsel, to bind or represent the position of other parties without their express consent to be so  
 12 bound”).

13 The Response also falsely claims Valve failed to properly set or communicate a response  
 14 deadline for the Petition. (Dkt. 48 at 7.) But the summons expressly stated that the deadline for a  
 15 response was 21 days after service, as Weber and Byer recognized by seeking an extension of time  
 16 to respond when they did. (Dkts. 10, 22; *see also* Dkts. 16, 20 (former Respondent Ninemire filing  
 17 an “answer” and motion to stay 21 days after service).)

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19 <sup>2</sup> Valve redacted the names of those individuals out of concern that Bucher would intimidate them.  
 20 (*See, e.g.*, Dkt. 40 ¶ 12 (“I have been informed by Bucher that terminating him as my attorney  
 21 immediately would leave the summons unresolved, and retaining him for the limited purpose of  
 22 negotiating an end to my involvement in the arbitration and this case (or hiring another attorney to  
 23 do so on my behalf) would incur fees that I am not currently equipped to deal with.”); *id.* ¶ 16  
 24 (Respondent stating that Bucher “says if I drop my arbitration claim now then I’ll need to hire  
 25 another lawyer at my own expense to negotiate with you to remove me from the federal action, or  
 26 I can pay him a bunch of money to do it”).)

<sup>3</sup> Each Respondent is a named party, there are no absent “class” members, and no Respondent  
 “class” could be certified, so it is unnecessary for Respondents to speak through “class”  
 representatives. *See Mary Kay Inc. v. Reibel*, 327 F.R.D. 127, 128 (N.D. Tex. 2018) (a named  
 defendant cannot seek certification of a class of co-defendants who were not sued as a class). The  
 Status Report also contains numerous misstatements unrelated to this Motion. Valve will not  
 burden the Court with responses to those misstatements here, but will provide a response on the  
 request of the Court.

1 The Response goes on to attack Valve for serving the Petition using a standard form  
 2 summons (Dkt. 10), claiming that was itself an *ex parte* communication that “bait[ed]” other  
 3 Respondents in this action to contact Valve and turn against Bucher. (Dkt. 48 at 3.) These  
 4 complaints about personal service ring hollow given that Bucher refused to accept service on  
 5 Respondents’ behalf. (Dkt. 39 at 3.) Regardless, Valve has a right to serve Respondents with  
 6 process. It did so. There is no basis to assert that Valve’s service of process included any  
 7 impermissible communication.

8 Similarly, the Response asserts that the Petition was “calculated to undermine each  
 9 Respondent’s existing attorney-client relationship with Mr. Bucher” and that much of the Petition  
 10 is “devoted to disparaging Mr. Bucher.” (Dkt. 48 at 4.) Not so. The allegations in the Petition are  
 11 accurate and directly relevant to the balancing of equities—an element of the injunctive relief  
 12 Valve seeks—as both the Petition and its supporting memorandum make clear. (Dkt. 1 ¶¶ 198-208;  
 13 Dkt. 2 at 17-19.) The Response cites no authority for the assertion that “Valve is absolutely  
 14 prohibited” from making such allegations “in any context.” (Dkt. 48 at 2.) Nor is Valve aware of  
 15 any legal principle that would prohibit it from making truthful, relevant allegations in support of  
 16 the relief it seeks from this Court.

17 The Petition seeks straightforward and necessary relief: enjoining arbitrations Bucher is  
 18 prosecuting notwithstanding that there is no agreement to arbitrate. The only unusual feature of  
 19 the Petition is the number of Respondents, which is a direct consequence of the number of  
 20 arbitrations that Bucher initiated. Bucher previously argued that the arbitration provision in  
 21 Valve’s now-superseded Steam Subscriber Agreement (“SSA”) was unenforceable, and the  
 22 arbitrator agreed and ruled that it was unenforceable. Bucher then commenced a putative class  
 23 action in this Court on behalf of Steam subscribers, including all Respondents in this action.  
 24 Bucher represents in that complaint that he can proceed in this Court on behalf of a nationwide  
 25 class because he “won binding decisions from arbitrators rendering Valve’s arbitration provision  
 26 [in the now-outdated SSA] unenforceable.” Compl. ¶ 13, *Elliott v. Valve Corp.*, No. 2:24-cv-01218

(W.D. Wash. filed Aug. 9, 2024).

In light of the rulings that the arbitration provision in the SSA was unenforceable and Bucher’s commencement of the overlapping class action—certainly not “out of nowhere,” as the Response states (Dkt. 48 at 3)—Valve amended the SSA to remove the arbitration provision. All Respondents have agreed to the current SSA, which does not contain an arbitration provision and provides that all claims will proceed in court.<sup>4</sup>

To avoid the burden of continuing to arbitrate duplicative claims—at the expense of subscribers, Valve, and the AAA—Valve filed the Petition under the Federal Arbitration Act. *See In re Am. Express Fin. Advisors Sec. Litig.*, 672 F.3d 113, 140 (2d Cir. 2011) (court may “enjoin arbitration proceedings” under 9 U.S.C. § 4 where “the parties have not entered into a valid and binding arbitration agreement”). This was especially warranted where Bucher has already commenced thousands of arbitrations, with tens of thousands more in the queue, notwithstanding that he is also pursuing a class action on behalf of the same individuals and more. The injunction Valve seeks will not prevent Respondents from pursuing their claims in court.

## **II. CONCLUSION**

The Response does not substantively engage with the relief Valve requested. Valve respectfully requests that the Court enter an order permitting Valve to send the proposed communications attached as Exhibits 1 and 2 to the Motion.

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<sup>4</sup> The Response’s assertion that “[p]rior to Valve’s initial *ex parte* contact, every Respondent was a party in an ongoing arbitration against Valve in his or her own home state” is demonstrably false. (Dkt. 48 at 3.) Many arbitrations are proceeding outside of Respondents’ home states, including more than a dozen arbitrations brought on behalf of non-California resident Respondents in which there were final hearings between December 2, and December 13, 2024, in California.

1 DATED this 13th day of December 2024.

2 I certify that this memorandum contains 1,824  
3 words, in compliance with the Local Civil Rules.

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